

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

LON SEXTON,

Plaintiff,

v.

Case No.

CMH HOMES, INC. d/b/a CLAYTON HOMES  
d/b/a OAKWOOD HOMES OF ALBUQUERQUE,  
CMH MANUFACTURING, INC., AND  
VANDERBILT MORTGAGE AND FINANCE, INC.,

Defendants.

**NOTICE OF REMOVAL**

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**ON NOTICE TO:**

FEFERMAN, WARREN, & MATTISON  
Nicholas H. Mattison  
300 Central Ave., SW, Suite 2000 West  
Albuquerque, NM 87102  
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PLEASE TAKE NOTICE THAT CMH Homes, Inc., CMH Manufacturing, Inc., and Vanderbilt Mortgage and Finance, Inc. (collectively referred to as “Defendants”) hereby file the following Notice of Removal of the above-captioned matter currently pending in the County of Bernalillo, Second Judicial District Court, under Case No. D-202-CV-2017-05955, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, with full reservation of any and all objections. In support of this Notice of Removal, Defendants respectfully state as follows:

## **I. PROCEDURAL HISTORY**

1. The case was commenced when Plaintiff Lon Sexton filed a Complaint in the County of Bernalillo, Second Judicial District Court, on or about August 16, 2017 (the “Complaint”). (Exhibit A.)

2. The Complaint asserts claims against Defendants CMH Homes, Inc., CMH Manufacturing, Inc., and Vanderbilt Mortgage and Finance, Inc. under Breach of Warranty, Revocation of Acceptance, Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, Violation of the Unfair Practices Act, Violation of the Manufactured Housing Act, Fraud, Negligence, and Strict Products Liability. (Exhibit A.)

## **II. TIMELINESS OF REMOVAL**

3. Plaintiff served the Summons and Complaint on Defendants on September 13, 2017.

4. This Notice of Removal is timely filed. *See* 28 U.S.C. § 1446(b)(1) (“The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading . . . .”); *see also* *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 346, 119 S. Ct. 1322, 1325 (the 30-day countdown is triggered by simultaneous service of the summons and complaint, or receipt of the complaint after the service of the summons). Additionally, the Notice is filed within one (1) year after commencement of the action. *See* 28 U.S.C. § 1446(b)(3) (“if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt of the defendant, through service or otherwise, of a copy of an amended pleading . . . from which it may first be ascertained that the case is one which is or has become removable.”); *see also* 28

U.S.C. § 1446(c)(1) (“a case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action.”)

5. Therefore, this Notice of Removal is timely.

### **III. BASIS FOR REMOVAL**

6. This Court has original diversity jurisdiction over this action because there is complete diversity between Plaintiff and Defendants and the matter in controversy, excluding interest and costs, exceeds the sum or value of \$75,000. *See* 28 U.S.C. § 1332(a).

#### **A. There is Complete Diversity of Citizenship Between Plaintiff and Defendants**

7. As alleged in the Complaint, Plaintiff Lon Sexton resides in Aztec, New Mexico. (*See* Compl. at ¶ 2, Exhibit A.) Plaintiff is therefore a citizen of New Mexico.

8. Defendant CMH Homes, Inc. is a foreign corporation, incorporated in, and with its principal place of business in the State of Tennessee, for purposes of diversity of citizenship under 28 U.S.C § 1332. (*See* Compl. at ¶ 4, Exhibit A.)

9. Defendant CMH Manufacturing, Inc. is a foreign corporation, incorporated in, and with its principal place of business in the State of Tennessee for purposes of diversity of citizenship under 28 U.S.C § 1332. (*See* Compl. at ¶ 7, Exhibit A.)

10. Defendant Vanderbilt Mortgage and Finance, Inc. is a foreign corporation, incorporated in, and with its principal place of business in the State of Tennessee for purposes of diversity of citizenship under 28 U.S.C § 1332. (*See* Compl. at ¶ 9, Exhibit A.)

11. Therefore, the diversity of citizenship requirement between Plaintiff and Defendants is satisfied. *See* 28 U.S.C. § 1332(a).

**B. Value of Matter in Controversy Exceeds \$75,000**

12. When determining the amount in controversy, the Court should look to the “allegations of the complaint or, where they are not dispositive, by the allegations of notice of removal.” *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995); *see also McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir. 2008) (“The amount in controversy is not proof of the amount the plaintiff will recover. Rather, it is an estimate of the amount that will be put at issue in the course of the litigation.”). Amount in controversy “is measured not by the monetary result of determining the principle involved, but by the judgment’s pecuniary consequence to those involved in the litigation.” *Thomson v. Gaskill*, 315 U.S. 442, 447 (1942).

13. In this case, Plaintiff claims damages related to the purchase of a manufactured home. (*See* Compl. at ¶ 1, Exhibit A.) Along with other claims, the Complaint seeks revocation of acceptance of the manufactured home. (*See* Compl. at ¶¶ 81–83, Exhibit A.) The Complaint admits that Plaintiff “agreed to pay \$88,110 for the Home, plus taxes and fees.” (*See* Compl. at ¶ 29, Exhibit A). Therefore, Plaintiff’s Complaint seeks to return a manufactured home and avoid a debt, or “pecuniary consequence,” valued at \$88,110. *Thomson*, 315 U.S. at 447. On top of seeking return of a manufactured home and avoidance of a debt valued in excess of \$75,000, Plaintiff also seeks treble damages, punitive damages, attorney’s fees, and costs. (*See* Compl. at “Prayer for Relief”, Exhibit A). Therefore, the \$75,000 threshold amount in controversy is met.

14. Thus, pursuant to 28 U.S.C. § 1332(a), this Court has jurisdiction over this matter in that the properly joined parties hereto are citizens of different states and the amount in controversy, exclusive of interest and costs, is in excess of \$75,000.00.

**IV. NOTICE TO ADVERSE PARTIES AND STATE COURT**

15. Under 28 U.S.C. § 1446(d), Defendants will give a prompt written notice of this Notice of Removal, to all parties of record and will file a copy of this Notice with the District Court Clerk of the County of Bernalillo, Second Judicial District Court.

16. Defendants will meet the requirements of Rule 81(c), Fed. R. Civ. P., and will timely file Answers within twenty one (21) days after service of the Summons and the Complaint. *See* Rule 81(c)(2)(C).

**V. FILINGS FROM STATE COURT DOCKET**

17. Pursuant to 28 U.S.C. § 1446(a), “all process, pleadings, and orders” are attached hereto. (*See* Exhibits A–C.)

18. If any question arises as to the propriety of the removal of this civil action, Defendants request the opportunity to present a brief and oral argument in support of their request to remove this civil action.

WHEREFORE, Defendants respectfully request the above action now pending in the Second Judicial District Court, County of Bernalillo, be removed to the United States District Court for the District of New Mexico.

Respectfully submitted,

BUTT THORNTON & BAEHR PC

/s/ Rodney L. Schlager

Rodney L. Schlager

Arslan S. Umarov

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I HEREBY CERTIFY that on the 18<sup>th</sup> day of  
September, 2017, I filed the foregoing electronically  
through the CM/ECF system, and that a true  
and accurate copy of the foregoing was mailed  
to opposing counsel as follows:

Nicholas H. Mattison  
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/s/ Rodney L. Schlager